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DR. D. GRAESER LTD. 9003 FLORIN WAY UPPER MARLBORO, MD 20772			VAN BRAMER, JOHN W	
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/587,002	REICH, YARON	
	Examiner	Art Unit	
	JOHN VAN BRAMER	3622	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 09 January 2009.

2a) This action is **FINAL**. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 66-94 is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) Claim(s) _____ is/are allowed.

6) Claim(s) 66-94 is/are rejected.

7) Claim(s) _____ is/are objected to.

8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some * c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. _____.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____ .
3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)	5) <input type="checkbox"/> Notice of Informal Patent Application
Paper No(s)/Mail Date <u>062308</u> .	6) <input type="checkbox"/> Other: _____.

DETAILED ACTION

Response to Arguments

1. The amendment filed on January 9, 2009, has cancelled all previously submitted claims. New Claims 66-94 have been added. Thus, the currently pending claims addressed below are claims 66-94.

Claim Rejections - 35 USC § 101

2. Claims 66-85 and 92-94 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Based on Supreme Court precedent, a method/process claim must (1) be tied to another statutory class of invention (such as a particular apparatus) or (2) transform underlying subject matter (such as an article or materials) to a different state or thing (see at least Diamond v. Diehr, 450 U.S. 175, 184 (1981); Parker v. Flook, 437 U.S. 584, 588 n.9 (1978); Gottschalk v. Benson, 409 U.S. 63, 70 (1972); Cochrane v. Deener, 94 U.S. 780, 787-88 (1876)). A method/process claim that fails to meet one of the above requirements is not in compliance with the statutory requirements of 35 U.S.C. 101 for patent eligible subject matter. Here the claims fails to meet the above requirements because the method steps are neither tied to another statutory class of invention (such as a particular apparatus) nor physically transform underlying subject matter (such as an article or materials) to a different state or thing. In the instant case, independent claims 66 and 92 discloses a method that does not

require a specific apparatus to be used in performing the claimed steps. The steps of building, selecting and delivering could all be performed manually.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 66-69, 71-89, and 92-94 are rejected under 35 U.S.C. 102(b) as being anticipated by Smith (PGPUB: US 2002/0188506 A1).

Claim 66: Smith discloses a method for delivering a weather-related advertisement to an individual, the method comprising:

- a. Building a weather-related advertisement according to a scenario determined at least partially according to a prediction of the weather.
(Paragraphs [0067]; [0028], [0031]; [0057]; [0059]; and [0063]; Figs 1, 7a, and 7b)
- b. Selecting the weather-related advertisement according to weather information about expected weather conditions, said expected, weather conditions being related to a geographically confined area and a defined period of time and wherein said weather information is determined according to location-based nowcasting, and wherein said weather-related advertisement is selected

according to at least one rule by a rule engine. (Paragraphs [0067]; [0028], [0031]; [0057]; [0059]; and [0063]; Figs 1, 7a, and 7b)

- c. Delivering said weather-related advertisement to the individual. (Paragraphs [0059], [0063], [0064], and [0067]; Figs 7a, 7b)

Claim 67: Smith discloses the method of claim 66 wherein said user location and time of day is automatically obtained from a wireless device. (Paragraphs [0008]; [0024]; [0026]; [0033]; and [0048])

Claim 68: Smith discloses the method of claim 67 wherein said wireless device is selected from the group consisting of a mobile telephone, portable device, PDA, mp3 player, mobile processing unit, mobile computing unit. (Paragraphs [0024] and [0025])

Claim 69: Smith discloses the method of claim 66 wherein said Rule engine obtains external data is selected from the group consisting of weather information, advertiser information, and user information. (Paragraphs [0030], [0031], and [0067])

Claim 71: Smith discloses the method of claim 66 wherein said user information is selected from the group consisting of historical data, preferences, brand loyalty, hobbies, marital status, age, sex, health, consuming habits, or family status. (Paragraph [0063])

Claim 72: Smith discloses the method of claim 71 wherein said advertiser data is obtained from said advertiser or from a third party. (Paragraphs [0028] and [0039])

Claim 73: Smith discloses the method of claim 69 wherein said advertiser data is selected from the group consisting of advertisement, advertisement rule, end user characteristics, target audience information, delivery mode and advertisement media. (Paragraphs [0030], [0031], and [0067])

Claim 74: Smith discloses the method of claim 66 wherein said at least one rule is abstracted from a rule engine matrix. (Paragraphs [0061] through [0065])

Claim 75: Smith discloses the method of claim 74 wherein said matrix comprises data relating to user information, advertiser data, and nowcast weather information. (Paragraphs [0061] through [0065] and [0067])

Claim 76: Smith discloses the method of claim 66 wherein said advertisement is delivered to a display. (Paragraphs [0024] through [0026] and Paragraphs [0061] through [0065])

Claim 77: Smith discloses the method of claim 76 wherein said display is associated with a device selected from the group consisting of a computer, wireless device,

mobile telephone, billboard, interactive television, a hoarding, a sign, portable device, embedded device, PDA, and a displayed Web page. (Paragraphs [0024] through [0026] and Paragraphs [0061] through [0065])

Claim 78: Smith discloses the method of claim 77, wherein said wireless device comprises a display screen, and wherein said advertisement is displayed in conjunction with said nowcast on said display screen. (Paragraphs [0024] through [0026] and Paragraphs [0061] through [0065])

Claim 79: Smith discloses the method of claim 66, wherein said advertisement is selected according to a plurality of rules by said rule engine. (Paragraphs [0061] through [0065])

Claim 80: Smith discloses the method of claim 66, wherein said learning engine compiles said advertisement specific to nowcast parameters, user reformation and advertiser information. (Paragraphs [0024] through [0026]; Paragraphs [0061] through [0065] and [0067])

Claim 81: Smith discloses the method of claim 66 wherein said advertisement is delivered in the form selected from the group consisting of text, coupon, animation, video, audio, storyboard and picture. (Paragraphs [0070] through [0072])

Claim 82: Smith discloses the method of claim 66 wherein said advertisement is delivered via wireless communication protocol. (Paragraphs [0024] through [0030])

Claim 83: Smith discloses the method of claim 66, wherein the advertisement is delivered to a plurality of individuals having at least one similar characteristic. (Paragraphs [0059] through [0063])

Claim 84: Smith discloses the method of claim 66, further comprising: determining efficacy of an advertisement on a consumer activity of the individual by said rule engine. (Paragraphs [0070] through [0072])

Claim 85: Smith discloses the method of claim 84 wherein an advertisement is updated according to said efficacy report. (Paragraphs [0070] through [0072])

Claim 93: Smith discloses the method of claim 66 wherein said rule engine comprises a learning engine for learning at least one aspect of the user preference(s) and/or consuming habit(s) according to the weather. (Paragraphs [0061] through [0065] and [0067])

Claim 94: Smith discloses the method of claim 66 wherein said user location and time of day is automatically obtained from an application or device chosen from the

group consisting of a third party device, a third party application, and the internet.
(Paragraphs [0008]; [0024]; [0026]; [0033]; and [0048])

Claim 86: Smith discloses a system for providing weather-related advertising to a user through an electronic device, comprising:

- a. A weather server for providing at least one weather related parameter wherein said at least one weather related parameter is determined according to location-based nowcasting. (Paragraphs [0067]; [0028], [0031]; [0057]; [0059]; and [0063]; Figs 1, 7a, and 7b)
- b. An advertising rule engine for selecting an advertisement at least partially according to said at least one weather related parameter, wherein said rule engine comprises a learning engine for learning at least one aspect of the user preference(s) and/or consuming habit(s) according to the weather. (Paragraphs [0067]; [0028], [0031]; [0057]; [0059]; and [0063]; Figs 1, 7a, and 7b)
- c. A server for serving said advertisement to the electronic device. (Paragraphs [0059], [0063], [0064], and [0067]; Figs 7a, 7b)

Claim 87: Smith discloses the system of claim 86, wherein said rule engine further comprises a database for storing at least one user characteristic and for selecting said advertisement also according to said user characteristic. (Paragraphs [0059] through [0063])

Claim 88: Smith discloses the system of claim 87, wherein said rule engine comprises an advertising matrix for selecting said advertisement according to a plurality of rules. (Paragraphs [0061] through [0065])

Claim 89: Smith discloses the system of claim 88, wherein said rule engine comprises a plurality of target groups and wherein said advertising matrix selects a target group for the end user such that said advertisement is selected according to said target group. (Paragraphs [0059] through [0065]).

Claim 92: Smith discloses a method for delivering a weather-related advertisement to an individual, the method comprising:

- a. Selecting the weather-related advertisement according to weather information about expected weather conditions, said expected weather conditions being related to a geographically confined area and a defined period of time. (Fig. 1; Page 2, paragraphs [0024] through [0031]; and Page 5, paragraph [0056] through Page 6, paragraph [0067])
- b. Delivering said weather-related advertisement to the individual. (Fig. 1; Page 2, paragraphs [0024] through [0031]; and Page 5, paragraph [0056] through Page 6, paragraph [0067])

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claim 70 is rejected under 35 U.S.C. 103(a) as being unpatentable over Smith (PGPUB: US 2002/0188506 A1).

Claim 70: Smith discloses the method of claim 69 wherein said external weather information is a forecast for a requested area or region. However, Smith does not specifically state that the weather information is selected from the group consisting of national and international meteorological agency, independent meteorological supplier and a private meteorological data. However, it would have been obvious to one of ordinary skill in the art at the time the invention was made that the external weather information would need to be acquired from some source and a national and international meteorological agency; independent meteorological supplier and a private meteorological data are such sources that provide weather information. The rational for including a national and international meteorological agency; independent meteorological supplier and a private meteorological data is that these

are one of a limited number of predictable sources of weather data from which to choose for receiving such data.

7. Claims 90 and 91 are rejected under 35 U.S.C. 103(a) as being unpatentable over Smith (PGPUB: US 2002/0188506 A1) in view of Sridhar et al (PG PUB US 2003/0208754 A1) .

Claims 90 and 91: Smith discloses the system of claim 88 (Paragraphs [0059] through [0065]). While Smith does not specifically state that the advertising matrix further builds an advertisement according to a plurality of components including animation components, the analogous art of Sridhar discloses on Page 13, second column, lines 1-12, that it is known to customize the presentation of advertisements in a location based system by modifying visual content to include human characters or animated cartoon characters or a combination thereof. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the Smith invention to include components for creating animated advertisement. The rational for including such components is that the value of an advertisement depends on its ability to attract and retain attention of a viewer, and advertisements geared to suit the audiovisual preferences of the viewer would be more successful in retaining the viewer's attention. (Sridhar, Paragraphs [0008] through [0020])

Response to Arguments

8. Applicant's arguments filed August 12, 2008 have been fully considered but they are not persuasive. The applicant argues that Claim 1, which has been cancelled but identically recited in newly proposed claim 92, recites a method for weather based advertising or information that is related to a nowcast which is not taught by Smith. The applicant further states that a nowcast is a forecast that is both within a real-time frame and a geographically confined location. However, Smith specifically states that the advertisements are based on the current weather conditions in the geographic area of the devices in Page 2, paragraphs [0024] through [0027] and [0067], thus the limitations of the claims as currently written have been met. In the disclosed citations, the area near the vehicle is considered a geographic area such a town, city or roads near the vehicle. Additionally, a geographically confined location is a broad term that can be interpreted as including not only the geographic area in the immediate vicinity of the device but may also include the geographic area in which the device will be traveling. The applicant further argues that while Smith discloses an advertising matrix, the matrix is not dependent on weather conditions but rather it is based on the customer purchase. The examiner agrees that Smith discloses an advertising matrix and provides an example in which the ad is selected based upon a purchase, Smith further discloses in paragraph [0067], that the adaptive advertising performed by Smith also includes the use of weather information for determining the ad to be displayed. Thus the limitations of the claim as currently written have been disclosed.

Conclusion

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to JOHN VAN BRAMER whose telephone number is (571)272-8198. The examiner can normally be reached on 6am - 4pm Monday through Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eric Stamber can be reached on (571) 272-6724. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

JV
/J. V./
Examiner, Art Unit 3622

/Eric W. Stamber/
Supervisory Patent Examiner, Art Unit 3622